



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of :
Modernizing the E-rate Program for Schools : WC Docket No. 13-184
and Libraries : CC Docket No. 02-6
Proposed Eligible Services for the E-rate :
Program, FY 2018 :

**REPLIES OF STATE E-RATE COORDINATORS ALLIANCE TO COMMENTS
ON THE FY 2018 DRAFT ELIGIBLE SERVICES LIST (DA 17-602)**

The State E-Rate Coordinators’ Alliance (SECA) submits these Replies to Comments in response to the FCC’s Public Notice released June 21, 2017 (designated DA 17-602) inviting stakeholders to comment on any aspect of the proposed Eligible Services List for FY 2018 (“ESL”) and welcoming comments based on parties’ experience with the ESLs for recent funding years.

There were two particular aspects of the ESL for which the Public Notice asked for input: first, Category One equipment that is necessary to make broadband services functional; and second, the category of service that should apply to inside wiring between different schools or libraries sharing a single building.

In addition to these topics, SECA will also address the necessity to develop a process for efficiently and fairly funding Category One broadband services, when transitioning between service providers, and the need to remove this situation from the “duplicate service” prohibition. This issue was raised by Kellogg & Sovereign® Consulting, LLC in their initial comments. We will also raise another “duplicate service” concern relating to circumstances when applicants may need to apply for Internet from two different vendors and should not be viewed as prohibited “duplicate service.”

Category One Equipment that is Necessary to Make a Category One Broadband Service Functional

The proposed ESL seeks to clarify that on-premises Network Equipment, interfacing with a Category Two-eligible local area network (LAN), is eligible for Category One support if it is necessary to make a Category One broadband service functional. Also, if the price for components that enable the LAN can be isolated from the price of the components that enable the Category One service, those costs should be cost-allocated out of the Category One funding request. We concur with these clarifications, but believe additional guidance is needed to enable applicants to understand the boundary between Category One equipment support and Category Two equipment support. Such guidance will enable applicants to submit “cleaner” applications and will enable the Administrator to process those applications more efficiently.

We encourage the FCC to work with USAC to develop specific examples of the type of network equipment that may qualify for Category One support based on the experience gained by USAC in reviewing FY 2016 and FY 2017 applications. We understand that the network configurations may be unique and that each request for support is case-specific and fact intensive. However, we believe that the Administrator has the ability to glean from their reviews some “common denominators” in the type of equipment and network configurations that qualify for Category One support. In the absence of more specific guidance, we fear that applicants will continue to flounder and be unsure of whether their Category One equipment support requests are appropriate, or whether they should be included as part of their Category Two internal connections equipment requests and subject to their Category Two budgets. Applicants also need to be informed of this guidance in order to properly prepare their Form 470 applications and post for Category One and/or Category Two equipment. If applicants post only for Category One equipment on their Form 470 applications, and during PIA review the equipment is then classified as Category Two, applicants risk denials due to their failure to post their Form 470 application for the proper category of service.

It would be particularly helpful for USAC to provide some network design drawings that illustrate when network equipment may or may not qualify for Category One support, similar to the network illustrations that were published to delineate when equipment may qualify for on-premise Priority One support under the pre-Modernization rules. Such network design drawings would not have to be incorporated into the Eligible Services List, but could be posted on the SLD website.

Connections between Schools Located in a Single Building and Connections between Schools Located on the Same Campus

The Proposed ESL Public Notice noted that the new requirement in the FY 2017 ESL, that connections between schools located in the same physical building are defined as Category One services, was waived by the Bureau in February of 2017. For FY 2017 applications, this waiver allowed multiple schools in a

single physical building to apply for these services as either Category Two or Category One support. SECA fully supported the waiver because, as the FCC noted, classifying these connections as Category One meant that an applicant would have to issue a RFP for self-provisioned services, as well as seek proposals for dark and lit fiber, and then would have to evaluate all options and select the most cost effective solution for this procurement that previously was designated as an internal connection.

The FY 2017 Public Notice issued with the final FY 2017 ESL stated that this new Category One classification of connections between schools on the same campus, or between different schools in the same building, was necessary based on the definition of wide area network and internal connections in the post E-rate modernization era. We believe, however, that the current regulations can be construed to continue to permit all of these connections to be designated as Category One or Category Two connections. We also believe that this interpretation, as explained below, will support the FCC's efforts to simplify the E-rate program. In the alternative, we support the FCC's continued waiver of the regulations to permit applicants to procure connections between different schools located in the same building under either Category One or Category Two. We also encourage the FCC to expand the waiver to allow applicants to procure connections between different schools located on the same campus under either Category One or Category Two.

As the FCC pointed out in Footnote 4 of the FY 2018 Draft ESL Public Notice, inside wiring traditionally is defined as customer-owned or controlled intra-building wiring *on the applicant side of the demarcation point*. This is a bright line test that can be employed when evaluating whether a connection between schools located on a single campus should be classified as Category One or Category Two. This is also consistent with the definition of internal connections that existed prior to the Modernization Orders and which did not change with the Modernization Orders. To be clear, we propose that this delineation should be used whether the circumstances involve multiple schools in the same building *or multiple schools on the same campus*. We believe that this approach can be implemented in a manner that is respectful of and consistent with the FCC's regulations defining internal connections and wide area networks.

The definition of internal connections focuses on support for eligible items/services that are "necessary to transport or distribute broadband within one or more instructional buildings of a *single school campus* or within one or more non-administrative buildings that comprise a single library branch." (Emphasis added). This is the same definition that existed prior to the 2014 Modernization Orders.

Historically the phrase "single school campus" has been interpreted to mean a single campus comprised of multiple buildings – which may be multiple buildings of the *same or different schools, or a non-instructional facility*.

For example in the "Tennessee Order" (FCC 99-216), the Commission noted in Paragraph 37:

It seems reasonable to presume that, if the facilities used in providing a service are located on the school premises, they are generally necessary to transport information within *one or more buildings of the school campus*, and are not part of an end-to-end Internet access service. Thus, in evaluating applications for discounts, the Administrator may generally presume that facilities located on a single school campus are internal connections. (Emphasis added).

The italicized language indicated that, where there were one or more buildings of a school campus, the facilities located on the school premises were internal connections and not part of the service provider's network. This description did not emphasize that the two buildings had to be part of the same school. Practically speaking, our understanding and experience has been that, whenever there was a connection between two buildings on a school campus, the connection was considered an internal connection. It was not considered a Category One service. There is nothing in the new definition of wide area network that compels a change in this interpretation.

Similarly, in the Fourth Order on Reconsideration in CC Docket No. 96-45, the Commission found that connections between *multiple instructional buildings* on a single school campus would constitute internal connections. (See Footnote 583.) Again, the focus was on multiple buildings on a single campus, and not on whether the buildings were designated as a single school.

Historically, the Commission and the SLD has interpreted the definition of internal connections communications wiring to be connections between multiple buildings located on the same campus, regardless of whether the connections were between two buildings that are the same "school" designated by the State, or between two different buildings that are two different "schools" recognized by the State. The focus has always been on whether the buildings are on a single campus, and not whether the buildings comprise a single school. The phrase "single school campus" should be interpreted to mean a "single campus" made up of one or more schools and not a "single school" on a "single campus." This interpretation is consistent with the manner in which the historical definition of internal connections has been applied and does not require any modification of the definition as found in the FCC's regulations.

This approach would allow the status quo to continue and permit applicants to continue to utilize their Category Two support for the connections between multiple schools on a single campus, if they so choose. We also believe that applicants should be afforded the latitude of pursuing Category One support for these connections if they want to comply with the RFP requirement for purchasing and self-provisioning these connections, and the requirement to bid and evaluate the most cost effective solution among self-provisioned, leased lit and leased dark fiber. The determination would be made by the applicant as to where the demarcation point for the applicant side of the network would occur when there are multiple schools on the same campus. Given that Category Two support funds have a limited budget for each applicant, we anticipate that applicants would be judicious in choosing to utilize Category Two support for these connections.

Alternatively, if the FCC disagrees with our interpretation that the existing regulations allow applicants to use either Category One or Category Two funds for these connections, then as stated above, we encourage the FCC to continue the existing waiver and to expand the waiver to include connections between multiple schools on the same physical campus.

Category One Broadband Support during Transition Periods

Kellogg & Sovereign® Consulting, LLC brought an important issue to the forefront in their initial comments relating to the manner in which the administrator has recently begun to apply the “duplicate service” prohibition in reviewing Form 471 applications inside EPC. Whereas in the past, applicants were provided latitude to receive prompt funding approval for broadband services while transitioning from one vendor to another, or from one service to another service provided by the same vendor, this latitude has been completely eliminated. The new approach is punitive to applicants in several ways.

Applicants no longer are given any flexibility in their funding approvals. They are being compelled to “guess” as to when the cutover to the new vendor (or new service) will occur for each and every site, and to limit their funding requests to 12 months of service for each site, allocated between the funding requests for the existing service and the new service. While at first blush this may seem reasonable and fair, in reality, it requires applicants to arbitrarily forecast and predict these dates sometimes more than a year in advance of when such cutovers will take place. There are many circumstances beyond the applicant’s and service provider’s control that may have an impact on these dates, making these predictions so far in advance impossible to pinpoint accurately. If the applicant’s forecast is wrong, the applicant may not be able to receive full funding for the service costs they incur. If the applicant does not want to forecast, then their only option is to postpone PIA review of their application until the cutovers are completed for every single site. In this case, the applicant typically must forego discounted bills and rely on the BEAR method to recoup discounts. While this may not seem like much of a hardship, for larger applicants such as large school districts and regional consortia, the time delay and ensuing financial burden for paying the full price for the services being delivered can be enormous and budget-breaking.

SECA is unsure of the best way to implement a proposed solution in light of the EPC processing limitations. However, we believe that any solution should accommodate a similar approach that has been allowed historically whereby an applicant may be funded for both the old and new services during the transition, but may only receive the benefit of E-rate discounts for 12 months of service to each site and location. The overlap in funding could be limited in consultation with the applicant and the service provider during PIA review. In order to ensure that the applicant understands that they may only claim E-rate discount funding of 12 months for each site, a certification could be obtained from applicants during PIA review. Applicants would then be responsible for submitting Form 500s to return any unused funds to the program to be available for other commitments.¹

¹ Funding only one FRN for the new service provider, and then allowing applicants to file a split FRN and SPIN change to allocate the costs between the old and new vendor during the transition period is currently an option to

Importantly, applications seeking funding for transition services when changing from one vendor to another (or from one service to another) should not be viewed as violating the program restriction against receiving duplicate funding and should not be denied. The Administrator should be directed to work with applicants to implement a workable solution that assures applicants can transition to new vendors and new services without fear of being denied funding.

Applicants' Purchase of Internet from Multiple Service Providers to Ensure they Have Adequate and Reliable Internet Should Not Be Viewed as Duplicate Service.

An increasingly compelling problem facing applicants is how to ensure that they have diverse and reliable Internet access service. Internet is as essential to schools and libraries as electricity and water. When there is an Internet outage, school and library activities grind to a halt.

The continued growth in demand for bandwidth that schools and libraries face may result in situations where they contract with more than one Internet vendor to ensure that their needs are met. In each instance the applicant has selected the most cost effective bidder. Per E-rate competitive bidding rules, the applicant may need to conduct a new procurement and post a new Form 470 if they are unable to amend their current agreement to increase their bandwidth. Even if they are permitted to increase their bandwidth, the applicant may want to post a new Form 470 to determine whether the proposals will offer more competitive prices. The new procurement may result in the selection of a different Internet access service provider as the most cost effective option. Consequently, the applicant may need to apply for Internet access service from multiple vendors. The applicant is using all of the Internet sources to meet their needs, has chosen the most cost effective bidder for each procurement, but the services are provided by different vendors. To be absolutely clear, this situation is *not* where one Internet connection may be dormant and used only when the first service goes out of service so that the service would be “redundant” or treated like a “spare” part of equipment that is not in service during the funding year.

During PIA review, applicants with multiple Internet FRNs receive inquiries about duplicate services and are told that only one of the two Internet FRNs may be funded. Unfortunately, due to the inaccurate perception that one of the contracts is for “duplicate service,” the applicant is forced to bear the full costs of the contracts when there is more than one service provider and is unable to obtain E-rate discount funding on the contracts and services.

address this situation but it has an inherent limitation. This approach compels applicants to wait until all of the sites have been turned up with the new service provider or migrated to the new service which may not take place until close to the end of the funding year. This also means that the applicant would have to pay the new and old vendors' bills in full pending the preparation and submission of the split FRN and SPIN change. Applicants transitioning to the new service would in effect be denied the ability to use the discounted billing method during the transition year.

In the 21st century, where Internet is a vital service that inhabits the classroom and library and where widespread Internet outages make national news, it seems antiquated to administer the E-rate program in such a rigid manner. Further, this approach hinders the ability of applicants to achieve the FCC's connectivity goals. We believe that the "duplicate service" restriction relative to Internet access service needs to be reviewed and updated to reflect the needs of the 21st century classroom and library. We believe that the procurement of multiple Internet access services should stop being deemed on its face to be duplicate service and automatically prohibited from being funded. A more detailed inquiry by PIA should be conducted, and applicants should be afforded the opportunity to explain and demonstrate that the purchases are cost-effective and not, in effect, "duplicative". This initiative would also allow the FCC to continue to achieve E-rate modernization.

In conclusion, SECA respectfully requests the Wireline Competition Bureau to consider these recommendations and to incorporate them into the final version of the FY 2018 Eligible Services List.

Respectfully Submitted by:

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